

## **Guidance to Case Managers/Early Interventionists For Assisting With the Determination of Legal Responsibility**

State Medicaid Policy does not allow the following family member/relatives to be paid for providing care or services to Medicaid recipients under any circumstances:

1. The spouse of a Medicaid recipient;
2. A parent of a minor Medicaid recipient;
3. A step parent of a Medicaid recipient;
4. A foster parent of a “minor” Medicaid recipient; or
5. Any other legally responsible guardian of a Medicaid recipient.

If a relative/family member is unsure about whether or not he/she is the legally responsible guardian of the Medicaid recipient, please consider and discuss with them the following indicators. Please remember that you do not need to reach a decision on your own. If, after considering the indicators noted, there are questions regarding legal responsibility, please forward pertinent information and questions to DDSN Central Office Waiver Staff and a legal opinion will be sought.

### **Is the person a minor (under age 18)?**

If so, the minor must have a legally responsible guardian/be in someone’s custody. For most minors, the parents are the legal guardian. For parents not to be the legal guardian, some legal/court action has to have occurred. If no legal/court action has occurred, the parents are the legal guardians.

- If the relative is not the minor’s parent, has anyone gone to court to get custody of this child?
- Are there legal documents/court papers stating who has custody of the minor?

### **Is the person an adult (18 years of age or older)?**

If so, people over the age of 18 are assumed to be competent and therefore may not have a legally responsible guardian. Parents are not automatically the legally responsible guardian of an adult with a disability. In order for anyone to be the legally responsible guardian of an adult, some sort of legal/court action has to have occurred.

- Are there legal documents/court papers stating that the person is not competent and appointing a guardian?
- If the documents exist, do they indicated that the action to be a general adjudication or is the adjudication limited?
- If limited, is the adjudication limited to health care decisions? *If so, the person is considered to be the legally responsible guardian, and therefore cannot be paid for services.*
- If limited, is the adjudication limited to financial decisions/conservator appointed? *If so, the person may not be legally responsible; please forward to DDSN Waiver staff for opinion.*

If there are any doubts/questions regarding legal responsibility, submit in writing a description of the concern/situation and any other pertinent information, including copies of legal/court documents, to DDSN Central Office Waiver staff.